

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TONEYA THOMAS HORTON,

Defendant-Appellant.

UNPUBLISHED

June 24, 2014

No. 316472

Wayne Circuit Court

LC No. 11-008346-FC

Before: DONOFRIO, P.J., and GLEICHER and M.J. KELLY, JJ.

PER CURIAM.

A jury convicted defendant of first-degree felony murder, MCL 750.316(1)(b), two counts of armed robbery, MCL 750.529, assault with intent to commit murder, MCL 750.83, two counts of unlawful imprisonment, MCL 750.349b, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to concurrent prison terms of life for the murder conviction, 23 to 40 years each for the robbery and assault convictions, and 10 to 15 years for each unlawful imprisonment conviction, to be served consecutive to a two-year term of imprisonment for the felony-firearm conviction. Defendant appeals as of right, and for the reasons provided below, we affirm.

Defendant's convictions arise from his participation with six other assailants in a criminal enterprise to rob Jeffrey Herron and William Abrams during a prearranged drug transaction, which ultimately led to the death of Abrams and the shooting assault of Herron on August 10, 2011, in the city of Detroit. Herron testified that, acting on behalf of himself and Abrams, he arranged to purchase a large sum of Oxycontin pills from defendant's brother, codefendant Tony Horton, whom he had known for several years. The next day, Tony summoned Herron to his house, which Tony shared with defendant, claiming to have acquired the requested drugs. Herron went to the front door, leaving Abrams in the car, and Tony told Herron to have Abrams join them. After both victims were inside and the front door was secured, Herron noticed that the pills were not visible and inquired about them. At that moment, defendant and four other assailants emerged from hiding and ambushed the victims. Defendant was armed with a firearm, which he brandished, as the victims were robbed of their money, ordered to the floor, and bound with rope and duct tape. Simultaneously, Tony counted and divided the robbery proceeds, and defendant received a share. The victims thereafter remained captive for several hours, during which they were hogtied with their hands and feet fastened behind their backs, kicked, taunted, and threatened. Eventually, the victims were "wiped down," carried from the house, and placed

in the rear of Herron's car. Tony, accompanied by one other assailant, drove the victims from the east side to the west side of Detroit, parked Herron's car on a side street, opened the backdoor, and fired on both victims. As Herron was "playing dead," Tony and his associate left the scene. When the police arrived in response to a report of screaming emanating from the car, Herron identified "Tony and Toneya" as his assailants. At trial, Herron again identified defendant, whom he had known for several years, as a participant in the criminal enterprise. Codefendant Christopher Lewis, a good friend of defendant, testified at trial that he left the Horton house after helping bind the victims. Lewis denied seeing defendant at the house, but testified that, after he left, defendant rode by his house with two of the assailants who had been in the house and paid Lewis \$150.

In his sole issue on appeal, defendant argues that the evidence was insufficient to support his convictions of first-degree felony murder and assault with intent to commit murder. Similar to what defendant argued at trial, he asserts that the evidence showed that codefendant Tony Horton shot the victims and that there was insufficient evidence that he participated in or had any knowledge of codefendant Tony Horton's independent decision to shoot the victims. When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). "[A] reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

At trial, the prosecutor advanced the theory that defendant was guilty of first-degree felony murder against Abrams and assault with intent to commit murder against Herron as an aider or abettor. First-degree felony murder requires proof that the defendant (1) killed the victim, (2) with the intent to kill, to cause great bodily harm, or to create a very high risk of death or great bodily harm with knowledge that death or great bodily harm was the probable result [i.e., malice], (3) while committing, attempting to commit, or assisting in the commission of a felony specifically enumerated in MCL 750.316(1)(b).¹ *People v Smith*, 478 Mich 292; 733 NW2d 351 (2007); *People v Gayheart*, 285 Mich App 202, 210; 776 NW2d 330 (2009). A jury may infer malice required for a felony-murder conviction from evidence that the defendant intentionally set in motion a force likely to cause death or great bodily harm or from the use of a deadly weapon. *People v Carines*, 460 Mich 750, 759; 597 NW2d 130 (1999). To sustain a conviction for assault with intent to commit murder, the prosecution must establish beyond a reasonable doubt that the defendant committed "(1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder." *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997); see also MCL 750.83.

A person who aids or abets the commission of a crime may be convicted and punished as if he directly committed the offense. MCL 767.39. "To support a finding that a defendant aided

¹ The underlying felony in this case was armed robbery.

and abetted a crime, the prosecution must show that (1) the crime charged was committed by the defendant or some other person, (2) the defendant performed acts or gave encouragement that assisted the commission of the crime, and (3) the defendant [either] intended the commission of the crime or had knowledge that the principal intended its commission at the time he gave aid and encouragement,” *People v Izarraras-Placante*, 246 Mich App 490, 496-497; 633 NW2d 18 (2001) (citation omitted), “or, alternatively, that the charged offense was a natural and probable consequence of the commission of the intended offense,” *People v Robinson*, 475 Mich 1, 15; 715 NW2d 44 (2006). “Aiding and abetting” describes all forms of assistance rendered to the perpetrator of a crime and comprehends all words or deeds that might support, encourage, or incite the commission of a crime. *Carines*, 460 Mich at 757; *People v Rockwell*, 188 Mich App 405, 411-412; 470 NW2d 673 (1991). “The quantum of aid or advice is immaterial as long as it had the effect of inducing the crime.” *People v Lawton*, 196 Mich App 341, 352; 492 NW2d 810 (1992). An aider or abettor’s state of mind may be inferred from all the facts and circumstances, including a close association between the defendant and the principal, and the defendant’s participation in the planning or execution of the crime. *Carines*, 460 Mich at 757; *People v Bennett*, 290 Mich App 465, 474; 802 NW2d 627 (2010). “[B]ecause of the difficulty in proving an actor’s state of mind, minimal circumstantial evidence is sufficient.” *People v Harverson*, 291 Mich App 171, 178; 804 NW2d 757 (2010).

For the first element of aiding and abetting, the evidence was sufficient to show that defendant’s brother, codefendant Tony Horton, committed the crime of first-degree felony murder by shooting Abrams in the head, causing his death, as part of the commission of an armed robbery that earlier took place in the brothers’ house. Further, there was sufficient evidence that Tony assaulted Herron, intending to murder him, by shooting him in the head and chest with a semiautomatic firearm.

Next, there was sufficient evidence to establish that defendant aided in the commission of the crimes. For both offenses, defendant seeks to separate his acts of assistance during the criminal enterprise from his brother’s act of shooting the victims, relying heavily on the fact that he was not at the location of the shootings. The jury could have inferred from the evidence, however, that defendant assisted in the commission of the crimes by actively participating in the underlying offense, i.e., the armed robbery, and that the shootings were within the scope of the participants’ common plan, which included silencing a robbery victim who could have easily identified defendant and the participants. The evidence was sufficient to allow the jury to find that defendant assisted his brother Tony in the crimes by (1) lying in wait, while armed, as Tony summoned the victims into the Hortons’ house under false pretenses, (2) ambushing the victims after Tony secured them inside the house, (3) holding the victims at gunpoint as they were robbed of their money and ordered to the ground, (4) continuing to hold the victims at gunpoint while three codefendants bound the victims with rope and duct-taped their mouths closed, (5) staying in close proximity to Tony and the other assailants for several hours while the victims were held captive, taunted, kicked, and hit, and doing nothing to help them, (6) being with Tony and their associates as comments were conveyed to the victims indicating that they would be killed and saying nothing to the contrary, (7) covering his hands with latex gloves before the victims were moved out of the house, thus unifying with the group as they once more took measures to avoid leaving identifiable evidence behind, and (8) still being part of the group when the victims were wiped down and carried to the car. Despite defendant’s attempt to distance his intentional acts that occurred at his east-side home from the shootings that occurred on the west

side, the victims would not have been in a position to be hauled off and shot if they had not been ambushed, threatened at gunpoint, and tied up inside defendant's house—all of which defendant actively assisted with. It naturally follows that by actively participating in the scheme to capture and rob the victims, as well as to eliminate any evidence that would later link defendant and the other participants to the victims, defendant performed acts that assisted in the shooting of the victims.

Lastly, the evidence was sufficient to show that defendant knew and intended at the time he actively participated in the robbery that Tony, or another codefendant, would kill both victims, or, at a minimum, that the victims could be shot as a natural and probable consequence of the commission of the planned armed robbery. There was evidence that defendant was armed with a gun and knew that the codefendants were armed with guns, and that while working in concert with Tony and their associates, defendant participated in the ambush, confrontation, demand of money, and imprisonment of the victims. Further, there was evidence that defendant briefly left with Tony and two other codefendants to purchase marijuana, leaving the victims hogtied on the floor with two gunmen watching them, that defendant subsequently smoked the acquired marijuana with the group and remained in close proximity to them while the victims were repeatedly taunted, threatened with death, walked over, and hit in the head with guns. In addition, the testimony that Herron had known defendant and Tony for more than a decade, and thus could easily identify them, yet committed the planned robbery inside the house that defendant shared with his brother—the shooter, and the testimony that defendant, Tony, and their cohorts never made any attempt to conceal their identity from Herron, wore latex gloves when they were in contact with the victims, and wiped down the victims before they were carried out of the house, was compelling evidence that the victims were not expected to be released. This evidence, considered together, was sufficient to enable the jury to find beyond a reasonable doubt that defendant participated in the robbery with knowledge that the victims would be killed.

Further, under the alternative “natural and probable consequences” theory, an aider and abettor is criminally responsible for anything that is fairly within the common enterprise such that one might anticipate its commission should the opportunity arise. *Robinson*, 475 Mich at 9. Viewed in a light most favorable to the prosecution, the evidence that defendant was aware that loaded firearms were being used to carry out the robbery, that Tony made a comment that indicated that the victims would be killed, that other death threats were made, and that the assailants took steps to avoid future detection or being linked to whatever happened to the victims, was sufficient to support a finding that murder (or an assault with intent to commit murder) was a natural and probable consequence of the planned common enterprise of armed robbery. That defendant did not ride in the car to the location of the shootings does not, under these circumstances, exonerate him from criminal responsibility for the crimes. Accordingly, the

evidence was sufficient to support defendant's convictions of first-degree felony murder and assault with intent to commit murder under an aiding and abetting theory.

Affirmed.

/s/ Pat M. Donofrio
/s/ Elizabeth L. Gleicher
/s/ Michael J. Kelly